

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

April 11, 2018

VIA ECF

Honorable James Orenstein
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**Re: *Batalla Vidal, et al., v. Nielsen, et al.*,
No. 16-cv-4756 (NGG) (JO)**

Dear Judge Orenstein:

We write to respectfully oppose Defendants' motion for an indefinite stay of their obligation under Rule 12(a)(4)(A) to answer Plaintiffs' Third Amended Complaint ("TAC"), as well as their request in the alternative for a 45-day extension of that deadline. Defs.' Mot. for Stay of Answer Deadlines Pending Appeal ("Defs.' Mot."), ECF No. 261. Plaintiffs do not oppose a short extension, but they oppose delay for the sake thereof, which is what Defendants have requested. Defendants have not claimed that they would be prejudiced by the ordinary operation of the Federal Rules of Civil Procedure; nor have they demonstrated that the claimed efficiency gains of further delay outweigh the prejudice it would cause Plaintiffs as they endeavor to continue to move this litigation forward. Accordingly, Plaintiffs request that this Court require Defendants to answer *Batalla-Vidal* Plaintiffs' TAC by April 20, 2018.

Defendants have had ample time to prepare their Answer to Plaintiffs' TAC, which was filed four months ago, on December 11, 2017. ECF No. 113. The allegations in the TAC "largely track[] Plaintiffs' previously operative pleading," itself filed September 19, 2017. Order at 3, ECF No. 122. Certainly, since February 13, 2018, when this Court issued its preliminary injunction, ECF No. 255, Defendants have been on notice that the Court would not dismiss the entire action and that they would therefore be obliged to file an Answer.

Rather than answer the complaint or negotiate with Plaintiffs for a jointly-approved reasonable extension, Defendants instead notified Plaintiffs five business days before their deadline that they intended to move this Court for an indefinite stay. Plaintiffs advised that they would consent to a short extension if Defendants needed it to prepare their Answer, but would oppose lengthy delays. Notably, although Defendants state in their motion that they would "need additional time beyond April 12" to prepare their Answer, Defs.' Mot. at 4, they do not represent or explain the reasons that they need 45 days to do so.

Defendants also argue that a stay would be more efficient. To the contrary, staying the deadline would only delay litigation further. This Court has already denied in part Defendants' motion to dismiss, preserving Plaintiffs' equal protection and procedural due process claims. ECF No. 260. Those claims are not on appeal. While Defendants indicate that they will seek

interlocutory appeal of that order, this Court should not stay the normal course of litigation based on a potential motion that has not been filed, let alone granted.

Defendants also argue that “modest relief” of an indefinite stay, or alternatively a 45-day extension, would not harm Plaintiffs. However, Plaintiffs strive to prosecute this litigation in a timely manner. Given that Defendants (a) have challenged the preliminary injunctions of the DACA Termination; and (b) “have yet to produce a plausible administrative record . . . , without which the court cannot render a merits decision,” Order at 50, ECF No. 255, Plaintiffs will suffer harm if the next steps in this litigation are further delayed, especially if Plaintiffs must seek further relief should the current preliminary injunctions be vacated or narrowed.

Finally, throughout this litigation, Defendants have employed “various dilatory tactics” to avoid even the most routine of litigation obligations. Order at 50, ECF No. 255. To delay producing the full administrative record, Defendants sought a writ of mandamus in the Second Circuit. The Second Circuit denied Defendants’ mandamus petition in December 2017, admonishing that Defendants are subject to ordinary procedures applicable to all litigants. Opinion and Order, *In re Duke*, 17-3345, ECF No. 171 (2d. Cir. 2017). Nearly six months ago, this Court directed Defendants to complete the administrative record, Memorandum and Order, *Batalla Vidal v. Nielsen*, ECF No. 89, but Defendants have yet to do so.

Similarly, Defendants sought to extend the deadline for their motion to dismiss by more than two weeks, Defs.’ Mot. for Extension of Time to Respond to TAC, ECF No. 115, and this Court rejected that request twice. Order, ECF No. 117; Order, ECF No. 122. There, as here, Plaintiffs had offered to consent to a short extension to address Defendants’ primary concern with the original deadline (that it would interfere with the holiday plans of Defendants’ counsels). ECF No. 122. However, as here, Defendants refused to negotiate and instead sought judicial intervention. This Court rightly rejected that request then and should do so again here.

Respectfully submitted,

/s/ Michael J. Wishnie

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